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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/040,944	01/09/2002	Vito James Carlucci	884.0051USU	5138

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EXAMINER
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FOSTER, JIMMY G

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 12/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/040,944

Applicant(s)

CARLUCCI ET AL.

Examiner

Jimmy G Foster

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 02 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

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1. The drawings are objected to under 37 CFR 1.83(a) as failing to show the slidable connector and abutments which are claimed in claim 13-16. It is noted that in the specification description it is stated that the slidable connector and abutments are not shown. Correction is required by either canceling the subject matter in the claims or providing the subject matter in the drawings without providing any new matter to the disclosure. (It is not clear that it will be possible to appropriately amend the drawings to provide the slidable connector and abutments without providing some new matter.)

2. Claim 7 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 7, the limitation, "axis of vertical extent" appears to be inaccurate since the axis for tilting the housing appears to be horizontal and not vertical.

3. Claims 13-16 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification fails to sufficiently describe the invention claimed in claims

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13-16 so as to enable one of ordinary skill in the art to make the invention claimed without undue experimentation. There is insufficient description with regard to how to make the slidable connector, how to connect the connector to the base, and how to dispose the slidable connector with the two abutments so that it cooperates with the two abutments claimed.

4. The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-3 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Bomeisler et al (Des. 216,349) in view of Box (3,282,462). In the reference of Bomeisler et al, there is provided a portable heater housing for hair curlers which includes plural curler/roller supports (see Fig. 2) and a lid which includes two sections that are individually hinged to the housing, as indicated in the figures of drawing. Upon closure of the lid sections, they abut/seal at a mid-line between opposed sides of the device.

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It is noted that no advantage is indicated in Applicant's disclosure for a single lid section pivot, as opposed to multiple pivots.

Although each of the lid sections of Bomeisler et al is pivotally attached to the housing at a pair of pivots on opposed walls, the reference of Box at 22 suggests that each of the lid sections of a container/case may be respectively pivotally attached by a single pivot, opposed to the free end of the section. As shown in Figures 2 and 3 of Box and as indicated in column 2, lines 52-57, this would apparently provide room for side strengthening ribs in the adjacent walls of the container, which provide improved mechanical stability and resistance to forces and loads. Accordingly, it would have been obvious in view of Box to have formed the lid sections of Bomeisler et al for single pivot connection (opposed to the free end) and to have made each lid section thereby pivotally connected to the housing along a single pivot, so as to permit room for strengthening ribs in adjacent container walls for providing stability and force resistance in the container.

6. Claims 1-5 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Montagnino et al (Des. 323,041) in view of Box (3,282,462). In the reference of Montagnino et al there is provided a housing for a hair setter, including a housing/lower portion, and a pair of opposed lid sections. The lid sections

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are hingedly attached at opposite ends and abut/seal along a mid-line when in the closed condition. The bottom of the lower portion is capable of supporting hair rollers. The lid sections define a handle element; accordingly, the housing is portable. On each side of the handle element, the lid sections include channels that are capable of directing condensation into the reservoir/volume of the housing.

It is noted that no advantage is indicated in Applicant's disclosure for a single lid section pivot as apposed to multiple pivots.

Although each of the lid sections of Montagnino et al is pivotally attached to the housing at a pair of pivots on opposed walls, the reference of Box at 22 suggests that each of the lid sections of a container/case may be pivotally attached by a single pivot, opposed to the free end of the section. As shown in Figures 2 and 3 of Box and as indicated in column 2, lines 52-57, this would provide room for side strengthening ribs in the adjacent walls of the container, which provide improved mechanical stability and resistance to forces and loads. Accordingly, it would have been obvious in view of Box to have formed the lid sections of Montagnino et al for single pivot connection (opposed to the free end) and to have made each lid section thereby pivotally connected to the housing along a single pivot, so as to provide room for strengthening ribs in adjacent

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container walls for providing stability and force resistance in the container.

7. Claims 4 and 5 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Montagnino et al (Des 323,041 described above) in view of Box (3,282,462) as applied to claim 1, and further in view of Jensen et al (3,700,855). The reference of Jensen et al, at 7,8 and at column 1, lines 12-18 and column 2, line 65 through column 3, line 23, suggests that an enclosure for curlers may includes a steaming means and that the underside of a lid of an enclosure for curlers/rollers may include channels (pyramidal shapes 7,8) that direct/channel condensation to the reservoir of the housing/casing, for the purpose of wetting curlers/rollers in the reservoir and recirculating humidity within the enclosure. Jensen et al also suggests providing plural roller supports for providing rollers at locations to receive the condensation. This permits providing moist curlers to the hair. Accordingly, it would have been obvious in view of Jensen et al to have provided the lid of the housing of Montagnino et al with condensation channels and to have provided the housing with a steaming means and plural roller supports, for the purpose of wetting the curlers/rollers and recirculating moisture within the housing.

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8. Claims 6-12 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Montagnino et al (Des. 323,041 described above) in view of Bogan et al (2,659,920). The reference of Bogan et al, at 7,12,14 and Figure 1, suggests that a container (6) may be provided on its lower portion with means (protuberances 7) to be connected to a base, and that a base (12,14) may be provided, having with means (spaced concave members 14) for connecting the base to the container (6), for the purpose of tilting the opening of the container with respect to the horizontal and toward a user, for the purpose of improving access to the contents of the container through the opening of the container. Accordingly, it would have been obvious in view of Bogan et al to have made the container of Montagnino et al with a base connected to the housing so as to tilt the container on the base, for the purpose of tilting the opening of the housing toward the user for better access to the curlers in the housing.

9. Claims 6-12 are also rejected under 35 U.S.C. § 103(a) as being unpatentable over Montagnino et al (Des. 323,041 described above) in view of Jensen (3,700,853) as applied to claim 5 above, and further in view of Bogan et al (2,659,920). The reference of Bogan et al, at 7,12,14 and Figure 1, suggests that a container (6) may be provided on its lower portion with means (protuberances 7) to be connected to a base, and that a base (12,14) may be provided with means (spaced concave members 14)



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for connecting the base to the container (6), for the purpose of tilting the opening of the container with respect to the horizontal and toward a user, for the purpose of improving access to the contents of the container through the opening of the container. Accordingly, it would have been obvious in view of Bogan et al to have made the container of Montagnino et al with a base connected to the housing so as to tilt the container on the base, for the purpose of tilting the opening of the housing toward the user for better access to the curlers in the housing.

10. Claims 9-12 are also rejected under 35 U.S.C. § 103(a) as being unpatentable over Montagnino et al (Des. 323,041). In the reference of Montagnino et al there is provided a housing for a hair setter, including a housing/lower portion, and a pair of opposed lid sections. The lid sections are hingedly attached at opposite ends and abut/seal along a mid-line when in the closed condition. The bottom of the lower portion is capable of supporting hair rollers. The lid sections define a handle element; accordingly, the housing is portable. On each side of the handle element the lid sections include channels that are capable of directing condensation into the reservoir/volume of the housing.

While the claims call for support for pivotal movement of the housing with respect to the base, there is not limitation requiring a connection between the housing and base. The bottom

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of the housing of Montagnino et al is provided with feet, as indicated in Figures 4-6. This suggests resting the housing on a supporting surface/base, such as a table or counter, such that it would have been obvious from the feet to have rested the housing on such a supporting surface/base. Inasmuch as the transition between the longitudinal housing sides and the housing bottom is rounded, the examiner asserts that the housing is capable of being pivoted with respect to such a supporting surface or base.

11. Claims 13-16 distinguish over the subject matter in the prior art.

12. Applicant's arguments filed October 2, 2003 have been fully considered but they are not deemed to be persuasive. The argument regarding the container of Bomeisler et al as not covering heatable hair rollers is without merit, since Applicant is claiming such rollers merely as intended use and not as structure. Applicant is directed to MPEP 2114 regarding the treatment of intended use limitations. Inasmuch as the lid sections of the reference are capable of closing on rollers of a suitable size less than the height of the housing, Applicant's intended use language does not distinguish over the reference subject matter.

Applicant has argued that the fastened abutment of the lid sections of Bomeisler et al does not constitute a seal.

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Applicant claims no particular structure that makes up the seal between the lid sections. Accordingly, the term "seal" used in the claims may be given its broadest customary meaning that is commensurate with dictionary definition. In Webster's New World Dictionary, Third College Edition, the term "seal" is broadly defined as something that closes or fastens tightly. The lid sections of Bomeisler et al abut and therefore may be said to seal since such an abutment, which is quite apparent in Figures 1 and 3 of the reference, constitutes a tight closure.

The argument regarding the container of Montagnino et al as not covering heatable hair rollers is, for the same reason as stated above for Bomeisler et al, without merit since Applicant is claiming such rollers merely as intended use and not as structure. Inasmuch as the lid sections of the reference are capable of closing on rollers of a suitable size less than the height of the housing, Applicant's intended use language does not distinguish over the reference subject matter.

The pivot connections of the lid sections of Montagnino et al are, for each lid section, connected to opposed ends of the housing (see Figures 1-3). The particular limitation of Applicant, for example presented in claim 11, does not distinguish over this.

Applicant has argued that the abutment of the lid sections of Montagnino et al does not constitute a seal. Applicant claims no particular structure that makes up the seal between the lid

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sections. Accordingly, the term "seal" used in the claims may be given its broadest customary meaning that is commensurate with a dictionary definition. In Webster's New World Dictionary, Third College Edition, the term "seal" is broadly defined as something that closes or fastens tightly. The lid sections of Montagnino et al abut and therefore may be said to seal since such an abutment, which is quite apparent in Figures 2, 4 and 7 of the reference, constitutes a tight closure.

Applicant's argument that the Montagnino et al reference is concerned with removal of moisture or with dry heating of rollers finds no support in the reference and is therefore unpersuasive. Applicant's further argument, insinuating that pyramid shapes are provided by the Jensen et al reference and not channels totally ignores the pyramid configuration and the channels located between them, shown in the reference. Moreover the pyramids themselves constitute channels since the channel/direct liquid to their tips, whereby it drops into the reservoir of the housing.

The argument regarding pivotal movement of the housing of Montagnino et al not being taught, unpersuasively argues intended use. The examiner maintains that the feet of Montagnino et al suggest placement on a base.

Applicant's argument that the housing of Montagnino et al does not include a reservoir is unpersuasive since the interior of the housing constitutes a reservoir.

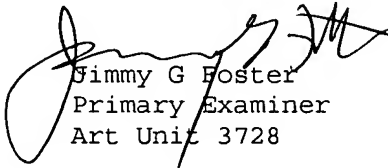
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13. This action is not made final since claims previously indicated as allowable have now been rejected.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jimmy G Foster whose telephone number is (703) 308-1505. The examiner can normally be reached on Mon-Fri, 8:45 am - 5:15 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (703) 308-2672. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3579.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

  
Jimmy G Foster  
Primary Examiner  
Art Unit 3728

JGF  
22 December 2003